

LIMITATION OF OBLIGATION AND LIMITATION OF FUNDS FOR TASK SWO CONTRACTING

[CT, CREI – 09/04] [FAR 52.232-22 – 04/84]

(This AGP supersedes the GP Article of this Subcontract entitled Limitation of Funds.)

This Article shall be applicable to an individual Subcontract Work Order (SWO) and the Article of this Subcontract entitled "Limitation of Obligation and Limitation of Cost for Task SWO Contracting" inapplicable to such individual SWO until such time as an amount equal to the total estimated cost and fee set forth in the individual SWO is allotted to this Subcontract and thereafter the Article of this Subcontract entitled "Limitation of Obligation and Limitation of Cost for Task SWO Contracting" shall be applicable and this Article inapplicable, unless and until the amount allotted to the individual SWO once again becomes less than the total estimated cost and fee set forth in the individual SWO.)

- (a) The parties estimate that performance of each individual Subcontract Work Order (SWO) will not cost the Institute more than (i) the estimated cost and fee specified in each individual SWO or, (ii) if this is a cost-sharing contract, the Institute's share of the estimated cost and fee specified in each individual SWO. The Subcontractor agrees to use its best efforts to perform the work specified in each individual SWO and all obligations under each individual SWO within the estimated cost, which, if this is a cost-sharing contract, includes both the Institute's and the Subcontractor's share of the cost.
- (b) Each individual Subcontract Work Order (SWO) specifies the amount presently available for payment by the Institute and allotted to the individual SWO, or the Institute's share of the cost if this is a cost-sharing contract. The parties contemplate that the Institute will allot additional funds incrementally to each individual SWO up to the full estimated cost to the Institute specified in each individual SWO, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on each individual SWO up to the point at which the total amount paid and payable by the Institute under each individual SWO approximates but does not exceed the total amount actually allotted by the Institute to each individual SWO.
- (c) The Subcontractor shall notify JPL in writing whenever it has reason to believe that the costs which it expects to incur in the performance of an individual Subcontract Work Order (SWO) in the next succeeding 60 days, when added to (i) all costs previously incurred; (ii) the amount of termination costs that would be payable by the Institute in the event of termination of the SWO for the convenience of the Institute; and (iii) any fee paid or payable up through such period; will either (i) exceed the total amount so far allotted to the individual SWO the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted to the individual SWO the Institute plus the Subcontractor's corresponding share.
- (d) If, after notification, additional funds are not allotted in sufficient time to enable the Subcontractor to continue performance of an individual Subcontract Work Order (SWO) in a timely manner, the Institute will, upon written request by the Subcontractor, negotiate a closeout of the SWO.
- (e) Except as required by other provisions of this Subcontract, specifically citing and stated to be an exception to this Article:
 - (1) The Institute is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by the Institute to each individual Subcontract Work Order (SWO); and
 - (2) The Subcontractor is not obligated to take action under the "Termination" Article of this Subcontract or to continue performance under an individual Subcontract Work Order (SWO) or otherwise incur costs in excess of (i) the amount then allotted to that individual Subcontract Work Order (SWO) by the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted by the Institute to that individual Subcontract Work Order (SWO) plus the Subcontractor's corresponding share, until JPL notifies the Subcontractor in writing that the amount allotted by the Institute has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Institute to that individual Subcontract Work Order (SWO).
- (f) The estimated cost shall be increased to the extent that (i) the amount allotted by the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted by the Institute to the individual Subcontract Work Order (SWO) plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the individual Subcontract Work Order (SWO). If this is a cost sharing contract, the increase shall be allocated in accordance with the formula specified in the individual Subcontract Work Order (SWO).
- (g) No notice, communication, or representation in any form other than that specified in subparagraph (e)(2) above, or from any person other than a duly authorized representative of JPL, shall affect the amount allotted by the Institute to an individual Contract Work Order (SWO). In the absence of the specified notice, the Institute is not

obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by the Institute to the individual SWO, whether incurred during the course of the Subcontract or as a result of termination.

- (h) When and to the extent that the amount allotted by the Institute to an individual Subcontract Work Order (SWO) is increased, any costs the Subcontractor incurs before the increase that are in excess of (i) the amount previously allotted by the Institute to the Subcontract, or (ii) if this is a cost-sharing Subcontract, the amount previously allotted by the Institute plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless JPL issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (i) Change orders shall not be considered an authorization to exceed the amount allotted by the Institute specified in the individual Subcontract Work Order (SWO), unless they contain a statement increasing the amount allotted.
- (j) Nothing in this Article shall affect the right of JPL to terminate this Subcontract. If this Subcontract is terminated, JPL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the Subcontract, based upon the share of costs incurred by each.
- (k) If the Institute does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in each individual Subcontract Work Order (SWO) equaling the percentage of completion of the work contemplated by each individual Subcontract Work Order (SWO).
- (l) Limitation of Obligation: The Institute shall not be obligated to pay the Subcontractor any amount in excess of the amount allotted to a SWO and the Subcontractor shall not be obligated to continue performance of the work described in such SWO or, to otherwise incur costs in excess of the amount, allotted to that SWO unless and until JPL shall have issued a written SWO Supplement increasing such allotted amount.